

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

EXPERIMENTAL DELIVERY CONFIRMATION
SPECIAL SERVICE CATEGORY AND FEE, 2001

Docket No. MC2001-2

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO ESTABLISH PROCEDURAL MECHANISMS CONCERNING SETTLEMENT
(September 20, 2001)**

The United States Postal Service hereby moves that the Commission establish certain procedural mechanisms designed to encourage the parties to consider expeditious resolution of the issues in this proceeding, based upon a proposed Stipulation and Agreement, which would allow the Commission to expedite its consideration of the Postal Service's Request. The Postal Service also hereby appends to this Motion a proposed Stipulation and Agreement for consideration by all parties which intervene in this proceeding.

Expedition Is Necessary And Reasonable

The experimental proposal submitted for review in this proceeding is time-sensitive. If the Commission is unable to complete its review of the Postal Service's request and issue a recommended decision sufficiently in advance of the proposed December 1-16, 2001, experiment window, the Postal Service will have no practical opportunity to implement or conduct the experiment, should that recommended decision be favorable.

The Postal Service recognizes that the timing of its request puts a premium on the Commission's ability to expedite this proceeding in a manner that respects the due

process rights of those who may intervene in this proceeding. At the same time, the Postal Service considers that the both the very limited scope and simplicity of its proposed experiment provide an opportunity for the parties to proceed with great care and expedition toward a resolution of any material issues.

The Postal Service considers that, by means of a Stipulation and Agreement among the parties which intervene in the instant proceeding, an opportunity exists to reach an expedited conclusion regarding its proposed experiment. Accordingly, the Postal Service requests that the Commission enter an Order which establishes procedures delineated below for consideration of a draft Stipulation and Agreement which is being proposed for resolution of the Request in this proceeding.

Proposed Mechanism For Settlement

The Postal Service anticipates that any discovery in Docket No. MC2001-2 related to the requested experiment might be relatively limited in duration and scope. Should any occur, it could be initiated, formally or otherwise, by participants immediately upon their intervention in the instant proceeding and could permit them to decide soon regarding what course to take in response to the proposed Stipulation and Agreement.

The Postal Service encourages all participants in the instant docket to consider the proposed Stipulation and Agreement (appended to this Motion) which seeks to expedite the resolution of this proceeding. To promote this opportunity for expedition, the Postal Service moves that the Commission include the procedures listed below in its formal public notice concerning this proceeding or give notice of their proposal by the Postal Service.

Without treading upon the due process rights of any participants in the instant proceeding, the Commission can issue an Order establishing the following procedures for consideration of the proposed Stipulation and Agreement which will be served upon all participants who obtain a copy of the Docket No. MC99-1 Request. The Postal Service suggests that the Order:

(1) enter the Postal Service's Request (with associated attachments), the testimony and library reference filed with this Request, and the Stipulation and Agreement into the record in this docket;

(2) give parties until October 10, 2001, to intervene and October 17, 2001, to complete discovery;

(3) require that objections to any discovery request be filed within three workdays days after whichever comes later, the date on which such a request is filed with the Commission or posted on the Commission website

(4) require that all answers to discovery requests be filed no later than five workdays after such posting.

(5) give notice of a formal pre-hearing conference to be convened on October 15, 2001, at 1:00 p.m.;

(6) make the Commission hearing room available to the Postal Service and the participants on that date at 10:30 a.m. as the venue for an informal off-the-record meeting to discuss the proposed Stipulation and Agreement and related matters in advance of the pre-hearing conference;

(7) provide notice to intervenors that, if they wish to contest the Postal Service's Request and the proposed Stipulation and Agreement, they must, by October

17, 2001, file a statement of their intention to do so. Any such statement should identify with specificity the issues contested, and state whether the intervenor intends to offer evidence on any such issues.

(8) If no such statements are filed, the record in this case shall be closed and the case submitted to the Commission for summary adjudication;

(9) If one or more such statements are filed, the filing parties shall have until October 24, 2001, to submit testimony and/or pleadings seeking to establish either that, owing to the existence of genuine issues of material fact, the proceeding is not suited to summary adjudication or that the Stipulation and Agreement is arbitrary, capricious, or otherwise not in accordance with applicable law. Responsive pleadings by other parties shall be due on October 26, 2001. The record shall then be closed provisionally and the issues adjudicated by the Commission.

(10) If the Commission finds that there are no genuine issues of material fact, it will promptly notify the parties of such and indicate its intention to issue a Recommended Decision accepting the classification and fees proposed in the Request and the Stipulation and Agreement.

(11) If the Commission finds (a) that there are genuine issues of material fact that prevent summary adjudication, or (b) that there are no genuine issues of material fact, but that it declines to recommend renewal of the experimental classification and fees for Manual Delivery Confirmation proposed in the Docket No. MC2001-2 Request and the Stipulation and Agreement, then it shall promptly notify the parties, identifying the genuine issues of material fact or other reasons for declining to adopt the proposed classifications and fees, and immediately set an expedited schedule for such additional

procedures which may be necessary for litigation of those matters. During that litigation period, any party to the Stipulation and Agreement may fully litigate the matters identified as disputed by the Commission, including discovery on the Postal Service with respect solely to those issues and presentations of testimony without withdrawing from the Stipulation and Agreement, provided that such party (a) continues to support a Commission recommendation of the classifications and fees proposed in the Postal Service's Request and (b) agrees to remain bound by the terms of the Stipulation and Agreement.

(12) If none of the actions by the Commission provided for in paragraphs 10 and 11 above have occurred by October 31, 2001,¹ any party to the Stipulation and Agreement may determine not to be bound further by that agreement and must provide written notice to all parties of this fact within three (3) business days of the above date. Any exercise of such right by one or more signatories shall not affect the operation of the Stipulation and Agreement as to other signatories.

The Postal Service considers that its Request in this docket, the accompanying testimony and exhibits of witness O'Hara (USPS-T-1), and any documents incorporated therein by reference, provide all data reasonably called for in an expedited proceeding focused on the very limited objective of obtaining authority to conduct the proposed

¹ The Postal Service desires to allow adequate time for the Commission to take action under either paragraph 9 or 10, but is strongly in favor of expedited resolution of this docket. It is thus hoped that the Commission would be able to act prior to the suggested May 7, 1999, date.

experiment.² Dr. O'Hara's testimony demonstrates that experimental classification and fee for Manual Delivery Confirmation service, if established, would satisfy the applicable classification and rate criteria of the Postal Reorganization Act.

Accordingly, the Postal Service requests that the Commission consider the adoption of the procedural mechanisms proposed herein, which reflect the expectation of the Postal Service that the instant proceeding has the potential to proceed expeditiously to a resolution.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking


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September 20, 2001
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² Simultaneously with this Motion, the Postal Service has filed motions seeking waivers of Rules 64(h) and 67c of the Commission's Rules Of Practice And Procedure.

CERTIFICATE OF SERVICE

I hereby certify that I have attached a copy of the foregoing (with the appended Stipulation and Agreement and Signature Pages) to each copy of the Request in this proceeding and that the Request and all related documents filed today will be served upon all other participants upon notice to the Postal Service of their intervention in this proceeding.

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WASHINGTON, D.C. 20268-0001

EXPERIMENTAL DELIVERY CONFIRMATION SPECIAL
SERVICE CATEGORY AND FEE

Docket No. MC2001-2

STIPULATION AND AGREEMENT

This Stipulation and Agreement is submitted pursuant to Rule 29 of the Rules of Practice and Procedure of the Postal Rate Commission, 39 C.F.R. § 3001.29, by and between the undersigned parties or through their respective attorneys. It is a negotiated settlement of all issues raised in the above-captioned docket. The undersigned parties hereby stipulate and agree to the following:

I. BACKGROUND

On September 20, 2001, pursuant to 39 U.S.C. §§ 3622 and 3623, the United States Postal Service filed with the Postal Rate Commission a request for a decision recommending the establishment of an experimental special service category and fee for Manual Delivery Confirmation used in conjunction with Priority Mail. The request was designated as Docket No. MC2001-2 by the Commission.

The basis for the request is explained in the Docket No. MC2001-2 Direct Testimony of Donald J. O'Hara on behalf of the United States Postal Service (USPS-T-1).

II. TERMS AND CONDITIONS

1. This Stipulation and Agreement represents a negotiated settlement of all issues raised by the Docket No. MC2001-2 Request of the United States Postal Service for a Recommended Decision On Experimental Delivery Confirmation Special Service Category And Fee.

2. The undersigned parties agree, for purposes of this proceeding only, that the Docket No. MC2001-2 direct testimony¹ of Postal Service witness Donald J. O'Hara (USPS-T-1) should be entered into the evidentiary record in this proceeding. This testimony, together with the Postal Service's Docket No. MC2001-2 Request and the attachments thereto, provide sufficient reasons and substantial evidence justifying a decision recommending the changes to the Domestic Mail Classification Schedule (DMCS) § 948.51 and Fee Schedule 948 sought by the Postal Service in Docket No. MC2001-2.

3. On the basis of such record, for purposes of this proceeding only, the undersigned parties stipulate that the requested DMCS and Fee Schedule changes, as are in accordance with the policies of title 39, United States Code, and in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623.

4. This Stipulation and Agreement is offered in total and final settlement of this proceeding. The undersigned parties agree that they will file no further pleadings or testimony with the Commission in this proceeding, with the exception of: (a) pleadings or testimony explicitly requested by the Commission or in reply to such pleadings; (b)

¹ And any materials incorporated therein by reference.

pleadings or testimony opposing pleadings or testimony filed in opposition to this Stipulation and Agreement; or (c) pleadings, testimony or comments in support of this Stipulation and Agreement.

5. If the Commission adopts a Recommended Decision that deviates from the classification and fee proposed in this Stipulation and Agreement, or if the Governors of the Postal Service fail to approve the Commission's Recommended Decision, then each signatory reserves the right to withdraw from this Stipulation and Agreement. Any signatory withdrawing under the terms of this paragraph must provide written notice of this fact to all parties within five (5) business days of the occurrence of the specific event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Stipulation and Agreement as to other signatories.

6. This Stipulation and Agreement pertains only to the instant proceeding. The parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, or any method of classification or ratemaking or cost of service determination, or design of rate schedule or term and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Stipulation and Agreement.

7. In any future negotiation or proceeding (other than any proceedings involving the honoring, enforcement, or construction of this Stipulation and Agreement), the parties shall not be bound or prejudiced by this Stipulation and Agreement, nor shall any party rely for any purpose on the fact that another party entered into or did not oppose this Stipulation and Agreement. The undersigned parties also agree that, to the

extent that matters presented in the Docket No. MC2001-2 Request, in any Commission Recommended Decision on that Request, or in any decision of the Governors of the Postal Service in this proceeding have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

8. As fully stated above, the agreement of the parties is intended to relate exclusively to the specific experimental Delivery Confirmation used in conjunction with Priority Mail, manual fee, proposal reflected in the Domestic Mail Classification Schedule and Rate Schedule provisions referenced herein, and is not intended to bind or prejudice the parties in any other proceeding. This understanding of the intended consequences of the agreement applies equally to all constituent parts of the agreement.

9. The undersigned parties request that the Commission expeditiously issue a decision recommending adoption of the requested experimental DMCS and Fee Schedule provisions.


10. This Stipulation and Agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained herein.

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SPECIAL SERVICE CATEGORY AND FEE, 2001

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SIGNATURE PAGE FOR STIPULATION AND AGREEMENT


Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking
United States Postal Service

September 21, 2001

BEFORE THE
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WASHINGTON, D.C. 20268-0001

EXPERIMENTAL DELIVERY CONFIRMATION
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For Intervenor:

Date: _____

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Pro Se

Date: _____